

## 2023 LEGISLATIVE WRAP-UP

The First Regular Session of the Seventy-fourth General Assembly adjourned on Monday, May 8, concluding the 120-day legislative session. Of the 610 bills that were introduced, CREA staff engaged on 42 bills. These ranged from general workforce legislation; policies to reduce greenhouse gas emissions; and legislation that would have increased regulatory oversight of electric cooperatives. CREA provided testimony in committees of reference on high profile bills including HB23-1039- Electric Resource Adequacy Reporting, HB23-1282- Protect Consumers from Public Utilities, and more. Most notably, CREA staff provided testimony to the Joint Select Committee on Rising Utility Rates and presented to the House Energy and Environment Committee on the innovative solutions cooperatives are adopting to help the state reach its greenhouse gas emission goals.

The legislative session was fraught with disagreements over major policy debates including land use, gun control, and health care costs. While the Seventy-fourth General Assembly boasted a super majority for the Democrats in the House of Representatives and one vote shy of a super-majority in the Senate, disagreements in the Democrat caucus created notable debates in committee hearings and in the House and Senate Chambers. Republicans in the House and Senate were able to capitalize on this, and with the help of strategic filibustering, Republicans were able to significantly influence several major pieces of legislation and in some cases prevented legislation from moving forward.

Due to public outcry over rising utility rates aimed primarily at Xcel Energy and natural gas utilities, General Assembly Leadership took steps to investigate the reasoning behind the price spikes, especially for natural gas. The Committee met three times during the session and heard presentations from state agencies, industry experts, advocacy groups, and the utilities during these proceedings. CREA, Holy Cross Energy, and CORE Electric Cooperative testified before the committee on behalf of electric co-ops. Representatives from the co-ops noted the challenges of providing electricity in rural and mountain communities at a competitive cost to

the investor-owned utilities. The Committee's work led to the introduction of SB23-291: Utility Regulation. The bill prohibits Xcel and Black Hills from recovering certain expenses in rate cases related to lobbying and public relations. It also requires IOUs to file gas price risk management plans with the PUC and authorizes the PUC to investigate costs associated with natural gas infrastructure. The bill also contains a provision that would authorize IOU wholesale customers to intervene in rate cases at the PUC. CREA tracked this bill closely to ensure co-ops were not harmed by the legislation. Please find more information below.

There were a handful of employment related bills that passed the General Assembly including an expansion of how employees can use accrued sick leave, hiring practices, and more. Over the summer, CREA will send out a memo outlining these bills and impacts to your co-op's employment policies. Please stay tuned for more information.

CREA further increased its legislative presence this year by testifying on bills, hosting a robust legislative reception, and bringing in legislators for the CREA annual meeting and CREA board meetings. This document covers an overview of various legislative successes CREA staff achieved this session.

CREA extends a special thank you to the Legislative Committee, chaired by Debbie Rose, the entire CREA board of directors, and our member co-ops for the collaborative effort to complete a successful legislative session. CREA staff also thanks our contract lobbying firm, Brandeberry McKenna Public Affairs for their continued support at the Capitol.

### CREA LEGISLATIVE SUCCESSES AT A GLANCE

**HB23-1282-Protect Consumers from Public Utilities (Oppose)** - The bill adds "public utilities" to the definition of "persons" potentially liable under the Colorado Consumer Protection Act (CCPA). CREA and member co-ops provided opposition testimony to the bill. CREA and its member co-ops led a broad coalition opposing the bill. The bill was laid over until July 1, 2023, effectively killing the bill.

**SR23-007-Electrical Lineworker Appreciation Day** - On Monday, April 10, 2023, Sen. Chris Hansen (D-Denver) and Sen. Cleave Simpson (R-Alamosa) read a resolution at the Capitol to establish Colorado Electrical Lineworker Appreciation Day. The day will be observed on April 18 each year to honor and recognize the crucial role that lineworkers play in providing safe and reliable electricity to communities throughout Colorado. CREA was the primary proponent of the Senate Resolution.

**HB23-1039-Electric Resource Adequacy Reporting (Support)** - CREA staff worked with its member cooperatives, Xcel, and other stakeholders to revise an earlier bill proposal that would have imposed significant regulatory burden and expanded PUC oversight. The bill requires electric utilities or their wholesale provider to file a report on the adequacy of their electric resources with the regulatory oversight entity responsible for approving their resource plans or rates. CREA staff provided support testimony on the bill. The bill was signed by Gov. Polis on April 25.

**HB23-1123-Move Over or Slow Down Stationary Vehicles (Support)** - CREA worked with the bill sponsors and proponents throughout the interim, where the bill was originally discussed in the Transportation Legislative Review Committee. CREA secured an amendment to include utility contractors in the definition of public utility service vehicles to ensure they are protected while working on the side of roadways. This concern was originally brought to CREA's attention by La Plata Electric Association. CREA helped lobby the bill and provided support testimony on the bill. HB23-1123 was signed by Gov. Polis on March 17.

**HB23-1074-Study Workforce Transitions to Other Industries (Support)** - CREA, with the support of the bill sponsors, successfully sought amendments to this bill to include language that promotes the transition of workers who lost their jobs in the oil and gas sector to jobs in the utility sector. CREA staff provided support testimony on this bill. The bill passed both the House and Senate and will be sent to Gov. Polis to be signed into law.

**HB23-1247-Assess Advanced Energy Solutions in Rural Colorado (Support)** - The bill requires the Colorado Energy Office to conduct studies to assess the use of advanced energy solutions in rural Colorado. CREA worked with the bill sponsors to adopt amendments that would study interconnection and transmission infrastructure on the Western Slope and require the Colorado Energy Office to evaluate incentives for building

advanced energy generation. CREA staff provided support testimony on this bill. The bill passed both the House and Senate and will be sent to Gov. Polis to be signed into law.

**SB23-198-Clean Energy Plans (Amend)** - The bill requires a cooperative that exits a wholesale power arrangement with a wholesale provider that filed a clean energy plan pursuant to SB19-236 and HB21-1266 to file a separate clean energy plan. Further, the bill requires "wholesale power marketers" serving load in Colorado to file clean energy plans. CREA staff, at the direction of the CREA Board of Directors, worked with the bill sponsors to address two concerns including:

- Extend the filing deadline for a clean energy plan from 18 to 24 months.
- Requires that wholesale providers disclose information to co-ops to submit clean energy plans.

The bill will be sent to Gov. Polis to be signed into law.

**SB23-292-Labor Requirements for Energy Sector Construction (Monitor)** - The bill seeks to require contracts for energy sector projects over \$500,000 in value to pay contractors "prevailing wages" and contracts over \$1 million to include apprenticeship programs. CREA started good-faith negotiations with leaders from various labor organizations in January 2023. The bill includes many of the changes CREA staff negotiated with labor representatives and other stakeholders, including the following:

- A revised legislative declaration that limits the "public interest" declaration to approved expenditures by regulated utilities.
- A revised definition of "construction" consistent with the Inflation Reduction Act, which is limited to "construction, alteration, or repair" of a project (this definition does not include "maintenance", which was in the original definition).
- An exclusion for construction of generation sized at 1 MW or less.
- An exemption for work performed under "service agreements" existing as of March 1, 2023.
- An exemption for distribution projects of 69kV or less; and
- An exemption from the apprenticeship requirements for work required in response to extreme weather, wildfire, or a declared state or federal emergency.

The bill was later amended to include an exemption for storage facilities with a nameplate capacity of 1MW or less. The bill passed both the Senate and the House and will be sent to Gov. Polis.

## OTHER LEGISLATION OF NOTE

**HB23-1252-Thermal Energy (Monitor)** - The bill authorizes the Colorado Energy Office to award grants for retrofitting existing buildings for installation of a geothermal system for heating and cooling under a single-structure geothermal grant that the CEO administers and for generating geothermal energy through direct air capture technology under the geothermal electricity generation grant that the CEO also administers. Further, the bill establishes labor standards for any thermal energy public projects that a state agency or a state institution of higher education procures. Additionally, the PUC shall initiate a proceeding on or before January 1, 2025, to determine if rule-making or legislative changes are needed to facilitate the development of geothermal energy in the state. Lastly, the bill repeals the “Geothermal Heat Suppliers Act,” which requires geothermal heat suppliers to obtain operating permits from the PUC. The bill will not have a direct impact on Colorado’s electric co-ops. The bill passed both the Senate and the House and will be sent to Gov. Polis.

**HB23-1281-Advance the Use of Clean Hydrogen (Monitor)** - The bill establishes a definition of clean hydrogen, clean hydrogen as derived from a clean energy resource that uses water as the source of hydrogen; or, produced through a process that results in lifecycle greenhouse gas emissions rates that are less than 1.5 kilograms of carbon dioxide equivalent per kilogram of hydrogen, as set forth in applicable federal law. Further, the bill directs the public utilities commission (PUC) to establish a stand-alone application, review, and approval process for investor-owned utility projects that result in the production of clean hydrogen (clean hydrogen project). For a clean hydrogen project to be approved by the PUC, an investor-owned utility must apply to the commission demonstrating that the clean hydrogen project involves collaboration between the investor-owned utility and a state or federal agency. The bill also provides an avenue for the PUC to develop a rule to allow an investor-owned utility to sell clean hydrogen to a third party under a clean hydrogen tariff. Section 3 creates a state income tax credit in specified amounts per kilogram of clean hydrogen used for industrial operations, for operating a heavy-duty vehicle, or for aviation. Any taxpayer seeking to claim the tax credit must first apply for and receive a tax credit certificate from the Colorado Energy Office. The bill is focused solely on incentivizing clean hydrogen for investor-owned utilities. There will be no direct impact on Colorado’s electric cooperatives. The bill passed both the Senate and the House and will be sent to Gov. Polis.

**HB23-1272-Tax Policy that Advances Decarbonization (Monitor)** - This package of clean energy tax credits draws down the costs of clean energy technologies for residents and businesses across Colorado and supports the Governor’s goals to reduce and stabilize energy cost while reducing emissions. It complements and builds on the incentives through the Federal Inflation Reduction Act and the Infrastructure Investment and Jobs Act and helps Colorado residents and businesses maximize their ability to bring federal dollars into our state. Individual elements of this tax credit package ramp up or down over time based on technology maturity, market demand, and other factors— averaging \$120 million annually through 2032. Per-year estimates for uncapped tax credits have not yet been evaluated by Legislative Council Staff. The estimated values of the various tax credits are below:

- Expanding Heat Pump Adoption (\$4-9M per year)
- Geothermal Electricity Development and Generation (\$5-\$13M per year)
- Industrial Emissions Reduction (\$10-24M per year)
- Clean Transportation (\$25-37M per year)
- Sustainable Aviation Fuel (\$1-3M per year)

The bill has passed both the House and the Senate and will be sent to Gov. Polis to be signed into law.

**HB23-1192-Additional Protections in Consumer Code (Oppose)** - The bill would have made significant changes to the Colorado Consumer Protection Act, which would have had a negative impact on Colorado’s electric co-ops. Section 1 of the bill would remove the knowingly or recklessly mental state from the general unfair or deceptive trade practice provision concerning an unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice. A coalition of other business leaders in the state including the Colorado Chamber of Commerce, the Metro Denver Chamber and more to amend the bill to remove section 1 of the bill addressing the concerns of the business community. The amended bill includes language to give the Attorney General the authority to bring a claim against a business which is price gouging in a declared emergency. Lastly, the bill seeks to harmonize Colorado’s anti-trust statute with statutes nationally by authorizing the Attorney General to prevent and restrain unfair methods of competition, which is a lower standard for action than in the current statute. The anti-trust portion of the bill was negotiated with the business community prior to the bill’s introduction. Many of the groups opposed to the legislation have moved to a neutral position

on the bill, once Section 1 was removed from the bill. The bill passed both the House and the Senate and will be sent to Gov. Polis to be signed into law.

**HB23-1294-Pollution Control Measures (Oppose)** - The bill has been amended significantly since its introduction. The bill still includes the “Legislative Interim Committee on Ozone Air Quality”. Unlike the regional air quality council (RAQC), air pollution control division (APCD) and the air quality control commission (AQCC), the members of the Committee are not required to have any experience in analyzing ozone issues and developing policy, technical, or financial solutions. As a result, there is no basis to believe that a non-scientific legislative committee can better manage this issue than the extensive agencies already engaged on this issue. However, the bill was amended to remove the interim committee’s ability to draft legislation. The bill was amended to only solicit feedback and presentations from industry experts. The bill requires the AQCC to promulgate rules that evaluate and address the cumulative impacts of oil and gas operations including, impacts to climate, public health, the environment, air quality, and more. Lastly, the bill allows for an individual to file a complaint with the AQCC alleging a violation of existing laws or regulations. The bill was amended to include protection for businesses against frivolous or false claims. The bill passed both the House and the Senate and will be sent to Gov. Polis to be signed into law.

**SB23-016-Greenhouse Gas Emissions Reduction Measures (Amend)** - The bill includes several provisions to reduce greenhouse gas (GHG) emissions in the state. For tax years 2024 to 2026, the bill creates a refundable income tax credit equal to 30 % of the purchase price of new electric powered law equipment. The credit will be provided as a discount to purchasers and then claimed by sellers that register with the Colorado department of revenue as a qualified retailer as a credit against their taxes. In addition, the bill establishes GHG reduction goals of 65 percent by 2035, and 75 percent by 2040, 90 percent by 2045, and increases the 2050 goal to 100 percent. CREA had requested an amendment that would remove the 2050 GHG reduction goal, however, this amendment was not accepted by the bill sponsors. Other notable parts of the legislation include:

- Specifies that wastewater thermal energy equipment is a type of pollution control device that may be certified as pollution control equipment and that qualifies as a clean heat resource for utilities’ clean heat plans.

- Extends an existing appropriation for the renewable and clean energy Initiative grant program in the Colorado department of local affairs (DOLA) through July 1, 2025.
- Requires retail electric utilities to provide timely interconnection for certain distributed generation resources, with violations subject to penalties and increases the circumstances and the amount of certain penalties imposed by the public utilities commission (PUC) on utilities and requires the PUC to update penalty levels annually. This section is focused on the investor-owned utilities.
- Requires the PUC, when reviewing an electric utility’s plan for the construction or expansion of transmission facilities, to consider the need for expanded transmission capacity in the state.
- Expands the types of projects eligible for financing under the Colorado electric transmission authority act to include facilities that are renovated, rebuilt, or reconditioned.
- Directs the Colorado electric transmission authority to conduct a study on the need for expanded transmission, report on its findings to the PUC by September 1, 2024, and submit a final report to the legislature by January 31, 2025.
- Requires local governments to expedite, as practicable, review of land use applications to renovate, rebuild, or recondition transmission lines.
- Prohibits a homeowners’ association from disallowing the use of a heat pump system on a residential property located within the community.

The bill passed both the House and the Senate and will be sent to Gov. Polis to be signed into law.

**SB23-017-Additional Uses of Paid Sick Leave (Amend)** - The bill expands the eligible uses of an employee’s accrued sick leave to grieve, attend a funeral service or memorial, or deal with a financial and legal matter that arises from the death of a family member. The bill does not contain a definition of a family member. However, the bill defines a family member as an immediate family member (who is related by blood, marriage, civil union, or adoption, a child to whom the employee stands in loco parentis or a person who stood in loco parentis to the employee when the employee was a minor, or a person for whom the employee is responsible for providing or arranging health- or safety-related care. Further,

the bill covers the usage of accrued sick leave for an individual who needs to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, heat water, or other unexpected circumstances or evacuate their home due to a natural disaster. CREA sought an amendment on behalf of feedback from the membership to exclude lineworkers from this bill, however, the sponsor did not accept this amendment. The bill will be sent to Gov. Polis to be signed into law.

**SB23-006-Creation of Rural Opportunity Office (Support)** - The bill establishes the rural opportunity office (ROO) as a permanent office in the office of economic development and international trade. The ROO is tasked with coordinating rural economic development across multiple state agencies. Further, ROO will work with coal transition communities to explore business and economic development opportunities. This may include helping coal transition communities apply for state and federal funding. CREA provided support testimony on this bill. The bill will be sent to Gov. Polis to be signed into law.

**SB23-092-Agricultural Producers Use of Agrivoltaics (Support)** - The bill seeks to expand access to agrivoltaics, a method to generate energy using solar panels over agricultural land without sacrificing significant agriculture production. The bill will also direct the Colorado department of agriculture to study greenhouse gas reduction and carbon sequestration opportunities in agriculture. In essence, this bill provides an opportunity to integrate renewable energy projects into agricultural land and over canals and rivers, where appropriate. It does not create any additional administrative burdens and may create opportunities for electric cooperatives to invest in new agrivoltaic and aquavoltaic projects. CREA took a support position on this bill at the request of La Plata Electric

Association. The bill passed both the House and Senate and will be sent to Gov. Polis to be signed into law.

**SB23-166-Establishment of a Wildfire Resiliency Code Board (Support)** - The bill would create a wildfire resiliency building code board in Colorado. The board aims to ensure community safety and promote resilience to wildfires by reducing the risk of wildfires to people and property by adopting statewide codes and standards. The board is required to promulgate rules concerning the adoption and administration of codes and standards for the hardening of structures and parcels in the wildland-urban interface in Colorado. Last year, a similar bill was brought forward but was ultimately postponed indefinitely. CREA worked closely with the proponents to secure an amendment that added a member of a statewide association of nonprofit utilities to the code board appointed by the Senate President. CREA provided support testimony on this bill. The bill will be sent to Gov. Polis to be signed into law.

**SB23-183-Local Government Provisions of Communications Services (Monitor)** - This bill makes modifications to existing statutes that regulate a local government's ability to provide broadband service. The bill eliminates the requirement that a local government hold an election before providing or before operating a facility to provide cable television, telecommunications, or broadband internet services to subscribers. Further, the bill specifies that a local government may provide middle mile infrastructure, which is broadband infrastructure that does not connect directly to an end-user location. CREA previously flagged this bill for CREA members who provide broadband and took a monitor position, based on the limited feedback received on the legislation. Gov. Polis signed the bill into law on May 1.